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OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

JAN 19 2012

FILED  
BY \_\_\_\_\_

BEFORE THE PRESIDING DISCIPLINARY JUDGE  
OF THE SUPREME COURT OF ARIZONA

In the Matter of a Member of )  
the State Bar of Arizona, )  
ANDREW P. THOMAS, )  
Bar No. 0014069, )  
Respondent. )

No. PDJ 2011-9002

**RESPONDENT THOMAS'S  
PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

**FINDINGS OF FACT**

1. Respondent Thomas has been a licensed member of the Arizona Bar since 1991. Tr. 10/26/11, p. 5.

2. Respondent Thomas was elected Maricopa County Attorney in the fall of 2004. He served as MCAO from January 1, 2005, until his resignation on April 5, 2010. Id.

**2006 opinion letters (count 1)**

3. Prior to the 2004 general election, Respondent Thomas met with Supervisor Stapley. During their meeting, Supervisor Stapley asked Respondent Thomas if he would support letting the BOS have its own attorneys, rather than a lawyer from the MCAO. Respondent Thomas was non-committal. Tr. 10/27/11, p. 12.

. . .

1        4.    After Respondent Thomas was elected, but before he took  
2 office, he had a conversation with the outgoing MCA, Richard  
3 Romley, who warned Respondent to watch out for Supervisor Stapley.  
4 Tr. 10/26/11, pp. 30-31.

5        5.    Arizona statutes establish the County Attorney's role.  
6 Part of the County Attorney's role is to serve as the public  
7 prosecutor of the County. The County Attorney also acts as the  
8 legal advisor to the Board of Supervisors ("BOS" or "the Board"),  
9 attends its meetings and opposes claims against the County that he  
10 deems unjust or illegal. A.R.S. §11-532.

11       6.    From time-to-time the County Attorney appoints outside  
12 counsel to represent or advise the Board, the County or County  
13 officials. During Respondent Thomas's tenure, the MCAO appointed  
14 outside counsel if it concluded there was a need for particularized  
15 expertise that was not in the MCAO itself, there was a dispute  
16 between two County offices, or the Board and another County  
17 official, or the County Attorney declared a conflict. Tr. 9/15/11,  
18 pp. 84-86.

19       7.    Sometime prior to February 13, 2006, Paul Golab, the  
20 deputy MCA who had acted as advisor to the BOS, announced his  
21 retirement. Respondent Thomas sent a letter dated February 13,  
22 2006, notifying then-Chairman Stapley of Golab's retirement, and  
23 assuring Stapley that the Board's input into the selection process  
24 will be "sought and encouraged." Exhibit 250.

25       8.    Approximately a week later, Mr. Stapley had a letter  
26 dated February 21, 2006, hand-delivered to Respondent Thomas.

1 Exhibit 251. In that letter, Mr. Stapley thanked Respondent Thomas  
2 for "the mutual decision" regarding the Board's representation.  
3 The letter went on to confirm a purported agreement by which the  
4 new lawyer would be "selected and appointed by" the BOS and be part  
5 of the BOS's budget.

6 9. The Stapley letter was delivered to Phil MacDonnell, the  
7 number two person in the MCAO, and one of Mr. Thomas's advisors, by  
8 Chairman Stapley and County Manager David Smith personally. Tr.  
9 9/15/11, pp. 77-78.

10 10. During the unannounced meeting, Chairman Stapley pressed  
11 Mr. MacDonnell to sign the letter. Mr. MacDonnell questioned  
12 whether Mr. Thomas had made such an agreement, and declined to sign  
13 the letter. Id.

14 11. Respondent Thomas denies that such an agreement ever  
15 existed. Tr. 10/26/11, p. 205. Respondent Thomas testified that  
16 the putative agreement would be contrary to the provisions of  
17 A.R.S. §11-532 and the Supreme Court decision in Bd. of Supervisors  
18 of Maricopa County v. Woodall, 120 Ariz. 379, 381-82, 586 P.2d 628,  
19 630-31 (1978). Id., pp. 207-208.

20 12. Respondent Thomas thereafter wrote a series of letters to  
21 Mr. Stapley about the issues of counsel for the Board and the  
22 appointment of outside counsel. Exhibits 6 through 10.

23 13. Mr. MacDonnell participated in the drafting of exhibits 6  
24 through 10. Tr. 9/15/11, pp. 81-84, 86.

25 14. Respondent Thomas did not, in fact, have a personal  
26 interest that created a substantial risk that his representation of

1 the Board would be materially limited when he expressed the  
2 opinions in exhibits 6 through 10.

3 15. IBC has failed to prove by clear and convincing evidence  
4 that Respondent Thomas did not in fact have a personal interest  
5 that created a substantial risk that his representation of the  
6 Board would be materially limited when he expressed the opinions in  
7 exhibits 6 through 10.

8 16. Respondent Thomas's belief that it was appropriate to  
9 express to the BOS the opinions stated in exhibits 6 through 10 was  
10 reasonable.

11 17. Respondent Thomas did not possess any of the culpable  
12 mental states set forth in the ABA Standards for Imposing  
13 Discipline ("ABA Standards") when he sent exhibits 6 through 10 to  
14 the MCBOS.

15 18. IBC has failed to prove by clear and convincing evidence  
16 that Respondent Thomas possessed any of the culpable mental states  
17 set forth in the ABA Standards for Imposing Discipline ("ABA  
18 Standards") when he sent exhibits 6 through 10 to the MCBOS.

19 19. Respondent Thomas filed a declaratory judgment lawsuit  
20 against the Board in June 2006. Exhibit 11.

21 20. Before filing suit, Respondent Thomas appointed outside  
22 counsel to represent the Board. Exhibit 9.

23 21. The dispute between Mr. Thomas and the Board was settled,  
24 even before the Board answered the lawsuit. The settlement was  
25 memorialized in a Memorandum of Understanding; Exhibit 15.

1       **Mr. Thomas's 2006 news release (counts 2 and 3)**

2       22. On the same day Respondent Thomas filed the suit against  
3 the MCBOS, he issued a statement announcing the suit's filing.  
4 Exhibit 13.

5       23. In that statement, Respondent Thomas declared that he  
6 "t[ook] this step only after holding numerous meetings and  
7 discussions with all five supervisors, meeting with the board  
8 collectively, sending the chairman of the board no fewer than five  
9 letters making plain the illegality of his proposed actions, and  
10 seeking to resolve these matters in various other ways." Id.

11       24. At the time he issued the June 14, 2006, statement,  
12 Respondent Thomas reasonably believed that the BOS, the highest  
13 authority that can act on behalf of Maricopa County, insisted upon  
14 an action that was clearly a violation of law, and that the  
15 violation was reasonably certain to result in substantial injury to  
16 Maricopa County and/or its taxpayers. Tr. 10/26/11, pp. 214-215.

17       25. Respondent Thomas's belief that this disclosure of client  
18 confidences was necessary to prevent substantial injury to the  
19 organization was reasonable.

20       26. IBC has failed to prove by clear and convincing evidence  
21 that Respondent Thomas's belief that this disclosure of client  
22 confidences was necessary to prevent substantial injury to the  
23 organization was unreasonable.

24       27. The statement also referenced lawsuits brought by County  
25 officials Sandra Dowling and Philip Keen. Respondent Thomas stated  
26 that he could not "in good conscience defend the Board of

1 Supervisors" in the Keen and Dowling lawsuits. Exhibit 13.

2 28. At the time he issued this news release, Respondent  
3 Thomas was unaware that civil deputies in the MCAO had been  
4 involved on the Board's behalf in the Keen and Dowling disputes.  
5 Tr. 10/26/11, p. 21.

6 29. Respondent's failure to be aware of the MCAO's prior  
7 representation of the BOS was not unreasonable. Ordinarily, the  
8 MCAO assigned outside counsel to each department or the BOS in  
9 intra-county disputes. Tr. 9/15/11, pp. 84-85.

10 30. Respondent Thomas did not know nor reasonably should have  
11 known that the statements contained in the 2006 news release would  
12 have a substantial likelihood of materially prejudicing an  
13 adjudicative proceeding in the Dowling or Keen matters.

14 31. IBC failed to prove by clear and convincing evidence that  
15 Respondent Thomas knew or reasonably should have known that the  
16 statements contained in the 2006 news release would have a  
17 substantial likelihood of materially prejudicing an adjudicative  
18 proceeding in the Dowling or Keen matters.

19 32. Respondent Thomas did not possess any culpable mental  
20 state under the ABA Standards when he issued the 2006 news release.

21 33. IBC has failed to prove by clear and convincing evidence  
22 that Respondent Thomas possessed any culpable mental state under  
23 the ABA Standards when he issued the 2006 news release.

24 **Stapley I (counts 4, 5 and 9)**

25 34. In January 2007, the MCAO and the MCSO formed a joint  
26 task force called MACE, which stands for Maricopa Anti-corruption

1 Effort. Tr. 10/26/11, p. 40.

2 35. Initially, Anthony Novitsky and Vicki Kratovil, the head  
3 of the Special Crimes Bureau of the MCAO, were tasked with the  
4 responsibility of heading up the MCAO's involvement in the task  
5 force. Id., p. 227

6 36. Early on in MACE's life, Respondent Thomas received an  
7 opinion from private attorney William French, a former Presiding  
8 Criminal Judge of Maricopa County. Id., p. 36.

9 37. Judge French's memo opined that the MCAO did not have a  
10 conflict prosecuting county officials. Exhibit 19, pp. 497-506.

11 38. The question whether there was an improper relationship  
12 between Supervisor Stapley and Phoenix attorney Tom Irvine has its  
13 genesis in a conversation during which then-Presiding Judge Mundell  
14 told former MCSO Chief Deputy Hendershott that she had been  
15 pressured to hire Irvine in connection with the Court Tower  
16 Project. Tr. 10/26/11, pp. 119-120.

17 39. During a conversation that occurred sometime in 2007,  
18 Respondent Thomas told Mark Goldman, then a special assistant  
19 deputy in the MCAO, about the perceived Stapley-Irvine  
20 relationship. Tr. 10/26/11, pp. 119-120.

21 40. Although the two disagree whether Respondent Thomas  
22 asked Mr. Goldman to do research, or whether Mr. Goldman  
23 volunteered to do it, Mr. Goldman began research to look into the  
24 ties between Supervisor Stapley and attorney Irvine. Id.; Tr.  
25 10/12/11, pp. 138, 167.

26 41. Mr. Goldman obtained information off the internet. Tr.

1 10/12/11, pp. 138-139. Respondent Thomas recalls being told that  
2 Mr. Goldman found a single financial disclosure form filed by  
3 Supervisor Stapley. Tr. 10/26/11, pp. 124-125, 147, 157.

4 42. Mr. Goldman obtained whatever information he gathered for  
5 the purpose of trying to see what properties Mr. Stapley owned to  
6 see if there was any connection to Mr. Irvine. Tr. 10/12/11, pp.  
7 135-137.

8 43. Mr. Goldman completed his investigation into Mr. Stapley  
9 before Mr. Goldman went to Mexico in May of 2007. Id., pp. 140-  
10 141.

11 44. Mr. Goldman went to a MACE unit meeting to present the  
12 information he had gathered. Id., p. 146.

13 45. At the time, neither Mr. Goldman nor anyone else in the  
14 MACE unit appreciated that the disclosure form might document a  
15 criminal failure to disclose.

16 46. Contemporaneous records kept by MACE head Vicki Kratovil  
17 document that the MACE unit did not review the disclosure for  
18 purposes of deciding whether a disclosure violation had occurred,  
19 but rather as a document generated as part of MACE's Stapley-Irvine  
20 investigation. Exhibit 19.

21 47. Meanwhile, Respondent Thomas forgot about the matter.  
22 Respondent Thomas testified that Mr. Goldman reminded Respondent  
23 Thomas in early 2008 about his (Goldman's) efforts in 2007. Tr.  
24 10/26/11, pp. 128-129.

25 48. Respondent Thomas asked Respondent Aubuchon to look into  
26 Donald Stapley's financial disclosures in March 2008. Tr.



1 10/26/11, p. 129.

2 49. Respondent Thomas asked that the investigation be  
3 completed within a month. The instruction had nothing to do with  
4 the statute of limitations. This instruction was given instead  
5 because Respondent Thomas had concluded that matters languished  
6 unless he set deadlines. Tr. 10/25/11, pp. 65-66; Tr. 10/26/11, p.  
7 238.

8 50. When Respondent Aubuchon began her investigation, she  
9 learned that Mark Goldman had previously obtained information about  
10 Supervisor Stapley, including the financial disclosure form.  
11 Nevertheless, it was Respondent Aubuchon's understanding the  
12 financial disclosure form concerned a different investigation, not  
13 pertaining to the sufficiency of Supervisor Stapley's financial  
14 disclosure forms. Id, pp. 41-42, 45-46.

15 51. In May 2008, Respondent Aubuchon had a meeting with law  
16 enforcement personnel. She had at the meeting a document that the  
17 various police officers have styled a "draft indictment." The so-  
18 called draft indictment was actually a template Respondent Aubuchon  
19 created for law enforcement to use during the investigation. It  
20 was drafted from another criminal non-disclosure case (Petersen).  
21 Tr. 10/25/11, p. 65; Exhibit 186.

22 52. Other Stapley disclosure forms were secured by MCSO  
23 investigators from Fran McCarroll, the Clerk of the BOS, in May  
24 2008. Tr. 10/14/11, pp. 146-147.

25 53. Respondent Aubuchon completed her review in late May  
26 2008. She presented her conclusions to Respondent Thomas.

1 Respondent Thomas directed Respondent Aubuchon not to go forward  
2 with an indictment until after the November 2008 election so as not  
3 to prejudice Supervisor Stapley's chances of re-election. Tr.  
4 10/26/11, pp. 238-239.

5 54. Respondent Aubuchon presented the Stapley case to a grand  
6 jury, which returned an indictment against Supervisor Stapley on  
7 November 20, 2008. Exhibit 38.

8 55. Respondent Thomas left the charging decisions to  
9 Respondent Aubuchon. Tr. 10/26/11, pp. 136-137, 138-139; tr.  
10 10/25/11, p. 69.

11 56. Exhibits 35, 246, 304, 509 and 510, all received in  
12 evidence without objection, document the evidence and information  
13 law enforcement had developed concerning the charges in Stapley I.  
14 This information was known to the MCAO before Supervisor Stapley  
15 was indicted. These documents establish that each charge in the  
16 Stapley I indictment was supported by probable cause.

17 57. The indictment contains 118 counts. The number of counts  
18 was not the result of improper motive. Tr. 10/26/11, pp. 137-138;  
19 Tr. 10/25/11, pp. 69-70.

20 58. Respondent Thomas had a substantial purpose other than to  
21 embarrass or burden Supervisor Stapley when his office pursued  
22 Stapley I. Tr. 10/27/11, pp. 16-17.

23 59. IBC has failed to prove by clear and convincing evidence  
24 that Respondent Thomas lacked a substantial purpose other than to  
25 embarrass or burden Supervisor Stapley when his office pursued  
26 Stapley I.

1        60. Before the indictment was announced and served on  
2 Supervisor Stapley, Respondent Thomas had a discussion with Mr.  
3 MacDonnell about pursuing the Stapley I criminal case. Tr.  
4 10/26/11, pp. 39-40; Tr. 10/27/11, pp. 18-19.

5        61. Mr. MacDonnell discouraged Respondent Thomas from moving  
6 forward, but Mr. MacDonnell's reasons were all political, rather  
7 than a concern about the merits. Id.

8        62. Before securing Supervisor Stapley's indictment in  
9 Stapley I, Respondent Aubuchon had not in fact discussed with any  
10 Civil Division deputy the substance of any legal advice that may  
11 have been given to Supervisor Stapley about his disclosure form.  
12 Exhibit 248A, pp. 6-7.

13        63. The Bar has failed to prove by clear and convincing  
14 evidence that Supervisor Stapley in fact harbored a reasonable  
15 belief that he was personally an MCAO client.

16        64. After the Stapley I indictment was served on Supervisor  
17 Stapley, his lawyers, among other things, sought to disqualify the  
18 MCAO on the basis of an alleged conflict. Mr. Stapley's lawyers  
19 argued that the MCAO could not prosecute Mr. Stapley because, they  
20 argued, Mr. Stapley personally was an MCAO client. Exhibit 107.

21        65. Following receipt of the motion, Respondent Thomas  
22 received assurances from three different sources (Mr. MacDonnell,  
23 Barnett Lotstein and Peter Jarvis) that he did not have a conflict.  
24 Tr. 10/24/11, pp. 40, 57-59; tr. 10/26/11, pp. 37-38; tr. 10/27/11,  
25 pp. 16-17.

26        66. Despite believing that his office did not have a conflict

1 prosecuting Supervisor Stapley, Respondent Thomas asked the Yavapai  
2 County Attorney, Sheila Polk, to take the case. Tr. 10/27/11, p.33.

3 67. Sheila Polk enlisted the help of Mel Bowers, a former  
4 Navajo County Attorney. Tr. 10/18/11, p. 196.

5 68. Both Ms. Polk and Mr. Bowers concluded that there had  
6 been "clear cut violations of the law." Tr. 10/19/11, p. 68.

7 69. Obtaining the single disclosure form in 2007 did not  
8 cause law enforcement to know or even to have reason to know that  
9 Supervisor Stapley had committed financial disclosure violations as  
10 to any of his other financial disclosure forms. Tr. 10/26/11, pp.  
11 37-38; tr. 10/24/11, pp. 40, 57-59; tr. 10/27/11, p. 16.

12 70. Law enforcement did not know nor have reason to know that  
13 Supervisor Stapley had committed financial disclosure violations as  
14 to any of his financial disclosure forms until 2008.

15 71. IBC has failed to prove by clear and convincing evidence  
16 that law enforcement knew or had reason to know that Supervisor  
17 Stapley had committed financial disclosure violations as to any of  
18 his financial disclosure forms any time before 2008.

19 72. Respondent Thomas did not know that any statute of  
20 limitation on any potential charge against Supervisor Stapley had  
21 run before the indictment was returned. As County Attorney,  
22 Respondent Thomas did not involve himself in the evaluation of  
23 statute of limitations issues as to any criminal cases in his  
24 office. Tr. 10/26/11, p. 238.

25 73. Respondent Thomas did not possess any of the culpable  
26 mental states set forth in the ABA Standards as to conduct alleged

1 in counts 4, 5 and 9.

2 74. IBC has failed to prove by clear and convincing evidence  
3 that Respondent Thomas possessed any of the culpable mental states  
4 set forth in the ABA Standards as to conduct alleged in counts 4, 5  
5 and 9.

6 **Chinese Wall representation (count 6)**

7 75. In a motion filed during the Stapley I prosecution,  
8 Respondent Aubuchon made the following statement:

9 The State is not intending to use any communications  
10 between any attorney in the Maricopa County Attorneys'  
11 Office and the defendant, nor is there any information to  
12 believe that any statements relating to this case were  
13 ever made or advice ever given. The civil division has  
14 informed the County Attorney that during the last four  
15 years, no deputy county attorney has been asked by any  
16 Supervisor, including the defendant, to assist or advise  
that Supervisor in the preparation of their individual  
financial disclosure forms. Regardless, the prosecution  
is not seeking to use any such confidences in this case.  
There has been and is a "Chinese wall" between the  
criminal and civil division of the County Attorney's  
office in the prosecution of this case.

17 Exhibit 248A, pp. 6-7 (Bates 7950-1).

18 76. During Respondent Aubuchon's employment at the MCAO,  
19 the Civil Division attorneys were prohibited from disclosing the  
20 substance of civil advice given to County officials. Id; tr.  
21 10/26/11, pp. 86-87.

22 77. The criminal and civil divisions of the Maricopa County  
23 Attorney's Office were physically located in different buildings.  
24 Tr. 9/13/11, p. 206. Respondent Aubuchon had no regular  
25 communications, job related or otherwise, with employees in the  
26 civil division. Respondent Aubuchon had no communication with any

1 employee in the civil division concerning the criminal prosecution  
2 of Mr. Stapley. Tr. 10/25/11, pp. 27-28.

3 78. It was not a misrepresentation to refer to the separation  
4 between the civil and criminal divisions in the MCAO as a "Chinese  
5 wall."

6 79. Respondent Thomas did not write the filing, approve it  
7 before it was filed, or "adopt" it in any way. Tr. 10/26/11, pp.  
8 84-85.

9 80. Respondent Thomas did not possess any of the culpable  
10 mental states set forth in the ABA Standards as to the "Chinese  
11 wall" reference made in the filing prepared by Respondent Aubuchon.

12 81. IBC has failed to prove by clear and convincing evidence  
13 that Respondent Thomas possessed any of the culpable mental states  
14 set forth in the ABA Standards as to the "Chinese wall" reference  
15 made in the filing prepared by Respondent Aubuchon.

16 **Judge Fields Bar charge (count 7)**

17 82. At the time of the Stapley I indictment, Judge Barbara  
18 Mundell was the Presiding Judge of Maricopa County. Tr. 10/3/11,  
19 pp. 91, 101-102.

20 83. Judge Mundell decided that she could not let one of the  
21 regular line judges preside over Stapley I for fear it might create  
22 problems during budget negotiations with the County. Id.

23 84. Judge Mundell left voice messages to more than one  
24 retired judge to call her. Id., p. 103.

25 85. Retired Judge Kenneth Fields was the first to respond to  
26 and he volunteered his services. Id.; tr.9/13/11, p.9.

1        86. Judge Baca, the Presiding Criminal Judge, appointed Judge  
2 Fields to preside over the case by minute entry dated December 4,  
3 2008. Exhibit 39.

4        87. Upon receiving Judge Baca's minute entry, Respondent  
5 Aubuchon developed questions about Judge Fields's appointment.  
6 Respondent Aubuchon could not tell from the minute entry the  
7 reasons behind appointing Judge Fields. The manner of his  
8 appointment was contrary to Respondent Aubuchon's experience of  
9 random assignment of judges. Tr. 10/25/11, pp. 73-74.

10       88. At the time Judge Fields was appointed, Ms. Aubuchon had  
11 reason to believe that Judge Fields was prejudiced against  
12 Respondent Thomas and the MCAO. Exhibit 27.

13       89. In a different filing in the Stapley I prosecution,  
14 challenging Judge Fields's assignment, Respondent Aubuchon stated  
15 the following in an argument heading: "Judge Fields is the  
16 complainant in an open and pending State Bar matter that he  
17 initiated against County Attorney Thomas." Id., p. 6 (Bates 598).

18       90. Judge Fields had filed a Bar charge against attorney  
19 Dennis Wilenchik. The charge itself does not refer to Respondent  
20 Thomas, but the Bar sent it to Respondent Thomas, and directed him  
21 to respond. Tr. 10/26/11, pp. 60-61.

22       91. Respondent Aubuchon attached a copy of the Fields Bar  
23 charge as an exhibit to the motion in which the argument heading  
24 quoted in ¶89 appears. Exhibit 27 (Bates 645).

25       92. Respondent Thomas did not write the filing, approve it  
26 before it was filed, know about it or "adopt" it in any way.

1        93. Respondent Thomas did not possess any of the culpable  
2 mental states set forth in the ABA Standards as to the bar charge  
3 reference made in the filing prepared by Respondent Aubuchon.

4        94. IBC has failed to prove by clear and convincing evidence  
5 that Respondent Thomas possessed any of the culpable mental states  
6 set forth in the ABA Standards as to the bar charge reference made  
7 in the filing prepared by Respondent Aubuchon.

8            **August 2009 news release (count 11)**

9        95. By minute entry dated August 24, 2009, Judge Fields  
10 dismissed multiple counts against Supervisor Stapley, finding that  
11 the BOS had failed to properly adopt the financial disclosure  
12 requirements Supervisor Stapley was charged with violating.  
13 Exhibit 110.

14        96. Following Judge Fields's ruling, Respondent Thomas issued  
15 something styled "Statement of Maricopa County Attorney's Office  
16 regarding ruling today in Stapley criminal case." Exhibit 243.

17        97. Mr. Thomas did not know or reasonably should have known  
18 that the statements contained in the August 2009 news release would  
19 have a substantial likelihood of materially prejudicing the Stapley  
20 I criminal case.

21        98. IBC failed to prove by clear and convincing evidence that  
22 Mr. Thomas knew or reasonably should have known that the statements  
23 contained in the August 2009 news release would have a substantial  
24 likelihood of materially prejudicing the Stapley I criminal case.

25        99. Respondent Thomas did not possess any of the culpable  
26 mental states set forth in the ABA Standards when issuing the



1 August 2009 news release.

2 100. IBC has failed to prove by clear and convincing evidence  
3 that Respondent Thomas possessed any of the culpable mental states  
4 set forth in the ABA Standards when issuing the August 2009 news  
5 release.

6 **December 2009 letters re hiring and paying Shughart**  
7 **Thomson (count 12)**

8 101. Respondent Thomas sent a letter dated December 5, 2008,  
9 to then-Chairman Andrew Kunasek. Exhibit 40. The letter states in  
10 part:

11 I urge you to cancel this Executive Session and  
12 accompanying Open Meeting item, and to consult with the  
13 Civil Division of the County Attorney for legal advice  
14 unless and until a conflict on a particular item is  
15 declared by the County Attorney. If you proceed with  
16 this action item to appoint outside counsel to perform a  
17 duty that the Constitution of Arizona entrusts to the  
18 County Attorney, you will be putting the Board in a very  
19 precarious position of performing an illegal act.  
20 Likewise, doing so **may** subject the Board to actions under  
21 A.R.S. §11-641 or §11-642 for recovery of monies  
22 illegally paid. Bates 1160 (emphasis added).

23 102. Later, after the Board had, in Respondent Thomas's view,  
24 unlawfully engaged the Shughart Thomson law firm, Respondent Thomas  
25 sent identical letters to the acting County Manager, the County  
26 Treasurer and the County Chief Financial Officer. Exhibit 66. The  
letters demand that warrants (a form of payment used by the County)  
not be issued to the outside law firm that the Board had (in  
Respondent Thomas's view) unlawfully hired. The letters go on to  
state:

1       Should any such warrants issue, their issuance **may**  
2       give rise to actions under A.R.S. §§11-641 or 11-642  
3       for recovery of monies illegally paid. **In that event**,  
      you would not be entitled to the immunity provisions  
      of A.R.S. §38-446.

4       Id. at Bates 1309 (emphasis supplied.)

5       103. Respondent Thomas had a substantial purpose other than to  
6       embarrass, burden or delay Chairman Kunasek, the three County  
7       officials who received exhibit 66, or the Shughart Thomson law firm  
8       when sending exhibits 40 and 66.

9       104. IBC has failed to prove by clear and convincing evidence  
10      that Respondent Thomas lacked a substantial purpose other than to  
11      embarrass, burden or delay Chairman Kunasek, the three County  
12      officials who received exhibit 66 or the Shughart Thomson law firm  
13      when sending exhibits 40 and 66.

14      105. Respondent Thomas did not possess any of the culpable  
15      mental states set forth in the ABA Standards when sending exhibits  
16      40 and 66.

17      106. IBC has failed to prove by clear and convincing evidence  
18      that Respondent Thomas possessed any of the culpable mental states  
19      set forth in the ABA Standards when sending exhibits 40 and 66.

20      **Court Tower investigation (counts 13 and 14)**

21      107. In late 2008, a grand jury subpoena was issued to  
22      Maricopa County Administration relating to the construction of the  
23      Court Tower. The subpoena was sought by Respondent Aubuchon, the  
24      deputy MCA assigned to conduct the grand jury investigation.  
25      Exhibit 44.

26      108. Although MCAO civil deputies had given legal advice to

1 various County personnel regarding the Tower, IBC failed to prove  
2 by clear and convincing evidence that any advice was given about  
3 the subject of the investigation, which was whether there had been  
4 some kind of criminal quid pro quo in the hiring of Phoenix  
5 attorney Tom Irvine as a "space planner." Tr. 10/25/11, pp. 208-  
6 209.

7 109. Respondent Aubuchon had attended Court Tower meetings,  
8 but not in the role of legal advisor. She provided no legal advice  
9 to any County official concerning any civil matter related to the  
10 Court Tower Project. Tr. 10/25/11, pp. 81-83.

11 110. Neither the Board of Supervisors nor the County itself  
12 was the objects of the investigation. As a nonjural entity, the  
13 MCBOS could not be charged with a crime. Tr. 9/14/11, p. 187; tr.  
14 10/25/11, p. 85.

15 111. Respondent Thomas had a substantial purpose other than to  
16 embarrass or burden when his office issued a grand jury subpoena to  
17 Maricopa County administration.

18 112. IBC has failed to prove by clear and convincing evidence  
19 that Respondent Thomas lacked a substantial purpose other than to  
20 embarrass or burden when his office issued a grand jury subpoena to  
21 Maricopa County administration.

22 113. Respondent Thomas did not have any personal interest, as  
23 that expression is used in ER 1.7(a)(2), in the so-called Court  
24 Tower investigation.

25 114. IBC failed to prove by clear and convincing evidence that  
26 Respondent Thomas had any personal interest, as that expression is

1 used in ER 1.7(a)(2), in the so-called Court Tower investigation.

2 115. Respondent Thomas did not possess any of the culpable  
3 mental states set forth in the ABA Standards as to conduct alleged  
4 in counts 13 and 14.

5 116. IBC has failed to prove by clear and convincing evidence  
6 that Respondent Thomas possessed any of the culpable mental states  
7 set forth in the ABA Standards as to conduct alleged in counts 13  
8 and 14.

9 **RICO (counts 15-20)**

10 117. On approximately November 1, 2009, Respondent Thomas  
11 tasked Respondent Aubuchon with the responsibility to draft and  
12 file a RICO complaint against the BOS, its members, two Maricopa  
13 County administrators, four judges, and three attorneys. Tr.  
14 10/25/11, p. 93; Tr. 10/2/11, p. 147.

15 118. Before filing the complaint, Respondent Aubuchon  
16 researched the factual allegations and RICO legal issues, and  
17 edited drafts of the complaint after receiving input from others in  
18 the MCAO. Tr. 10/25/11, pp. 93-94.

19 119. The RICO complaint was filed on December 1, 2009.  
20 Exhibit 145.

21 120. Respondent Thomas's name appeared in the caption of the  
22 RICO suit. He was a party to the action in his official capacity,  
23 not one of the lawyers prosecuting the case. Tr. 10/26/11, pp. 54-  
24 55.

25 121. Respondent Thomas incorporates by reference Respondent  
26 Aubuchon's proposed finding of fact number 9, on page 89 of her

1 Final Argument memorandum.

2 122. Respondent Thomas had a substantial purpose other than to  
3 embarrass or burden when his office pursued the RICO lawsuit on his  
4 behalf.

5 123. IBC has failed to prove by clear and convincing evidence  
6 that Respondent Thomas lacked a substantial purpose other than to  
7 embarrass or burden when his office pursued the RICO lawsuit on his  
8 behalf.

9 124. There was a good faith basis in law and fact that was not  
10 frivolous for bringing the RICO lawsuit. Tr. 10/27/11, pp. 111-112.

11 125. With the exception of the Board of Supervisors, none of  
12 the defendants listed in the RICO caption was personally an MCAO  
13 clients. Tr. 9/14/11, p. 187.

14 126. Although the MCAO does represent the BOS, because it is  
15 not a jural entity the BOS was never a proper party defendant, and  
16 would have been dismissed.

17 127. Respondent Thomas did not have a personal interest that  
18 created a substantial risk of materially limiting the  
19 representation of Sheriff Arpaio in the RICO action.

20 128. IBC has failed to prove by clear and convincing evidence  
21 that Respondent Thomas had a personal interest that created a  
22 substantial risk of materially limiting the representation of  
23 Sheriff Arpaio in the RICO action.

24 129. Respondent Thomas did not possess any of the culpable  
25 mental states set forth in the ABA Standards as to conduct alleged  
26 in counts 15, 16, 17, 18, 19 and 20.

1        130. IBC has failed to prove by clear and convincing evidence  
2 that Respondent Thomas possessed any of the culpable mental states  
3 set forth in the ABA Standards as to conduct alleged in counts 15,  
4 16, 17, 18, 19 and 20.

5        **Stapley II/Wilcox (counts 21-23)**

6        131. The MCSO began an investigation of Supervisor Wilcox on  
7 May 12, 2009, because of a Phoenix Magazine article entitled "A  
8 Rose By Any Other Name." Tr. 10/13/11, pp. 205-207.

9        132. The article alleged that Ms. Wilcox had failed to  
10 publicly disclose loans her business had received (and which she  
11 and her husband had personally guaranteed) from a subsidiary of  
12 Chicanos Por La Causa, a county contractor who had also recently  
13 received government funds, distributed by Maricopa County.  
14 Supervisor Wilcox voted to approve the disbursement of those funds  
15 without disclosing the obvious conflict. Ex. 284.

16        133. An investigation by the MCSO ensued. Tr. 10/13/11, pp.  
17 205-207.

18        134. Following the indictment in Stapley I, MCSO investigators  
19 continued to look into Supervisor Stapley's business dealings.  
20 Additional evidence was gathered about loans, campaign accounts and  
21 Mr. Stapley's dealings with the Arizona Real Estate Department.  
22 Among other things, a 1031 real property exchange-transaction was  
23 found; as a consequence of that swap, Mr. Stapley received  
24 approximately \$15,900 per month from August 2004 to July 2007 under  
25 an option. The option payments increased to approximately \$25,900  
26 per month beginning August of 2007, and continued until July 2008.

1 Exhibit 18 (Bates 113-342); Exhibit 30; Exhibit 96; Exhibit 304;  
2 Exhibit 305.

3 135. On May 19, 2009, Sheriff's investigators began a detailed  
4 investigation into Mr. Stapley's affiliation with NaCO, the  
5 National Association of Counties, a non-governmental association.  
6 Investigators learned that Mr. Stapley had actively solicited funds  
7 from private donors under the premise of running for the position  
8 of NaCO's Second Vice-President. Mr. Stapley received donations  
9 totaling almost \$140,000, even though, it turns out, he ran  
10 unopposed for the position. Investigators determined that Mr.  
11 Stapley used a significant portion of the funds for personal  
12 expenses. At least \$10,000 was received after he was elected.  
13 Exhibit 306.

14 136. Supervisor Wilcox was indicted, initially, on December 7,  
15 2009, and then indicted a second time on January 25, 2010.  
16 Exhibits 160-161, 174 and 193.

17 137. Mr. Stapley was indicted the second time, in December  
18 2009, on the strength of MCSO's investigation (Stapley II).  
19 Exhibit 306.

20 138. Before the Stapley II and Wilcox indictments were handed  
21 down, the MCAO had sought the BOS's approval to hire special  
22 prosecutors to handle the matters. Exhibit 131.

23 139. The BOS refused to approve the appointment, citing  
24 questionable grounds for its refusal. Tr. 10/126/11, pp. 143-144,  
25 191-192.

26 140. Respondent Thomas had a substantial purpose other than to

1 embarrass or burden when the MCAO obtained the indictments in  
2 Stapley II and Wilcox.

3 141. IBC has failed to prove by clear and convincing evidence  
4 that Respondent Thomas lacked a substantial purpose other than to  
5 embarrass or burden when the MCAO obtained the indictments in  
6 Stapley II and Wilcox.

7 142. Respondent Thomas was not simultaneously prosecuting  
8 Supervisors Stapley and Wilcox at the same time he was suing them  
9 as a party.

10 143. Respondent Thomas did not possess any of the culpable  
11 mental states set forth in the ABA Standards as to the prosecution  
12 of Stapley II and Wilcox.

13 144. IBC has failed to prove by clear and convincing evidence  
14 that Respondent Thomas possessed any of the culpable mental states  
15 set forth in the ABA Standards as to the prosecution of Stapley II  
16 and Wilcox.

17 **Donahoe criminal prosecution (counts 24-30)**

18 145. Before criminal charges were filed against Judge Gary  
19 Donahoe on December 9, 2009, all of the following facts and  
20 circumstances existed:

21 a. A motion to quash a grand jury subpoena, issued to  
22 secure records to investigate criminal charges concerning the so-  
23 called Court Tower, a County facility financed with hundreds of  
24 millions of dollars of public monies, built especially for the use  
25 of the Superior Court, was filed (Exhibit 56);

26 b. Although the criminal investigation concerned



1 allegations of criminal patronage involving Supervisor Stapley  
2 (whose criminal case had led Presiding Judge Barbara Mundell, the  
3 judge who appointed Judge Donahoe to his position as Presiding  
4 Criminal Judge, to appoint someone other than a sitting Maricopa  
5 County Superior Judge to preside over the Stapley criminal case),  
6 Judge Donahoe refused to recuse himself from consideration of the  
7 motion to quash, a refusal that to a reasonable lawyer appeared to  
8 be a violation of the Canon of Judicial Ethics (Exhibit 85);

9           c. At the same time, Judge Donahoe disqualified the  
10 MCAO from pursuing the grand jury investigation despite lacking a  
11 legally sufficient basis to disqualify the MCAO (Id);

12           d. At the same time, Judge Donahoe refused to  
13 disqualify the law firm representing the BOS in the matter despite  
14 the fact one of the firm's principals was the subject of the  
15 investigation, a fact Judge Donahoe knew (Id);

16           e. Shortly thereafter, Judge Donahoe assigned to  
17 himself the lower court appeal in LC2009-000701 DT, an appeal from  
18 a lower court decision denying a motion to controvert a search  
19 executed on the business premises of entities owned or controlled  
20 by Conley Wolfswinkel, someone with whom Supervisor Stapley  
21 (himself the subject of ongoing criminal investigations for which  
22 the subpoena was issued) did business (Exhibit 523, at Bates  
23 010011);

24           f. The manner in which Judge Donahoe assigned the case  
25 to himself was not only contrary to established court policy (tr.  
26 10/3/11, pp. 125-127), but also was done in such a way as to

1 suggest he deliberately sought out a case that would otherwise  
2 never have been assigned to him;

3 g. Judge Donahoe overturned the lower court in a ruling  
4 that appears not only to be wrong, but also to have failed to  
5 adhere to the statutorily-established standards of review  
6 applicable to such lower court appeals (Exhibit 523 at Bates 01001-  
7 5);

8 h. Upon receiving an unnumbered court filing styled  
9 "Notice and Motion re: Unauthorized Special Deputy County  
10 Attorneys," a motion that appeared to be yet another effort by the  
11 BOS to prevent criminal investigations into their activities, and a  
12 response from the MCAO pointing out that the motion was  
13 procedurally irregular and that the court lacked jurisdiction to  
14 consider it, Judge Donahoe nonetheless set a December 9, 2009,  
15 hearing on the motion (Exhibit 137; Exhibit 141; Exhibit 144);

16 i. Judge Donahoe later refused to vacate the hearing  
17 despite the fact his office received a motion to disqualify him  
18 filed under Rule 10.1 of the Rules of Criminal Procedure, a Rule  
19 that requires the judge that is the subject of the motion to stay  
20 all proceedings until after the motion is ruled upon (Tr. 10/25/11,  
21 pp. 183-184).

22 146. There was probable cause to bring criminal charges  
23 against Judge Donahoe on December 9, 2009.

24 147. The criminal charges against Judge Donahoe were filed on  
25 the morning of December 9, 2009. The charges were filed at that  
26 time because the prosecutors and Sheriff believed that Judge

1 Donahoe's conduct constituted ongoing criminal conduct. Respondent  
2 Thomas separately wanted the charges filed before a press  
3 conference he had scheduled the morning of December 9. Respondent  
4 Thomas was also concerned that if charges were filed after the  
5 December 9 hearing, they would be falsely labeled retaliatory. The  
6 charges were not filed at that time, or ever, to force Judge  
7 Donahoe to vacate the December 9 hearing. Tr. 10/25/11, p. 187;  
8 Tr. 10/26/11, p. 186-187.

9 148. Respondent Thomas did not know the charges filed on  
10 December 9, 2009, against Judge Donahoe lacked probable cause.

11 149. IBC has not proved by clear and convincing evidence that  
12 Respondent Thomas knew the charges filed on December 9, 2009,  
13 against Judge Donahoe lacked probable cause.

14 150. Respondent Thomas had a substantial purpose other than to  
15 embarrass or burden when his office caused a direct criminal  
16 complaint to be filed against Judge Donahoe on December 9.

17 151. IBC has failed to prove by clear and convincing evidence  
18 that Respondent Thomas lacked a substantial purpose other than to  
19 embarrass or burden when his office caused a direct criminal  
20 complaint to be filed against Judge Donahoe on December 9.

21 152. Respondent Thomas did not know the charges against Judge  
22 Donahoe were false.

23 153. IBC has failed to prove by clear and convincing evidence  
24 that Respondent Thomas knew the charges against Judge Donahoe were  
25 false.

26 154. Before the direct complaint was filed, Det. Almanza and

1 Sgt. Luth had a meeting in Respondent Aubuchon's office during  
2 which she went through the documents establishing Judge Donahoe's  
3 guilt. Tr. 10/11/11, pp. 127-8, 147, 185; tr. 10/14/11, pp. 175-6;  
4 Tr. 10/25/11, p. 196.

5 155. Respondent Aubuchon assured Sgt. Luth in response to his  
6 question that she thought the charges against Judge Donahoe were  
7 valid. Id.

8 156. If the direct complaint is signed by an officer, the  
9 officer attests that the contents are based merely "on information  
10 and belief." Tr. 10/25/11, p. 190; Exhibit 163 (Bates 1906).

11 157. The law enforcement officer who signed the direct  
12 complaint, Det. Almanza, denied believing that what he signed was  
13 false. He was told by his superior, Sgt. Luth, that he (Almanza)  
14 could "answer that question [whether the complaint is true and  
15 correct to the best of his knowledge] truthfully and say yes." Tr.  
16 10/11/11, pp. 133-34. Tr. 10/14/11, pp. 119-120.

17 158. Both Det. Almanza and Respondent Aubuchon testified that  
18 Ms. Aubuchon had no idea that Det. Almanza would be the person  
19 signing the complaint. Tr. 10/11/11, p. 136, 174-5; tr. 10/25/11,  
20 p. 199.

21 159. Respondent Thomas did not know or believe that whichever  
22 law enforcement officer signed the direct complaint would be  
23 committing perjury.

24 160. IBC has failed to prove by clear and convincing evidence  
25 that Respondent Thomas knew or believed that whichever law  
26 enforcement officer signed the direct complaint would be committing

1 perjury.

2       161. Respondent Thomas did not know Det. Almanza would be the  
3 person signing the Donahoe criminal complaint. Tr. 10/25/11, p.  
4 198.

5       162. IBC has failed to prove by clear and convincing evidence  
6 that Respondent Thomas knew Det. Almanza would be the person  
7 signing the Donahoe criminal complaint.

8       163. Respondent Thomas did not conspire with anyone to injure,  
9 oppress, threaten or intimidate Judge Donahoe from the exercise of  
10 his constitutional rights.

11       164. IBC has failed to prove by clear and convincing evidence  
12 that Respondent Thomas conspired with anyone to injure, oppress,  
13 threaten or intimidate Judge Donahoe from the exercise of his  
14 constitutional rights.

15       165. Respondent Thomas did not decide to go forward with  
16 criminal charges against Judge Donahoe on December 9 to injure,  
17 oppress, threaten or intimidate Judge Donahoe from the exercise of  
18 his constitutional rights.

19       166. IBC has failed to prove by clear and convincing evidence  
20 that Respondent Thomas decided to go forward with criminal charges  
21 against Judge Donahoe on December 9 to injure, oppress, threaten or  
22 intimidate Judge Donahoe from the exercise of his constitutional  
23 rights.

24       167. Respondent Thomas did not himself represent the State in  
25 the criminal case against Judge Donahoe.

26       168. Respondent Thomas did not possess any of the culpable

1 mental states set forth in the ABA Standards as to conduct alleged  
2 in counts 24, 25, 26, 27, 28, 29 and 30.

3 169. IBC has failed to prove by clear and convincing evidence  
4 that Respondent Thomas possessed any of the culpable mental states  
5 set forth in the ABA Standards as to conduct alleged in counts 24,  
6 25, 26, 27, 28, 29 and 30.

7 **Bug Sweep (count 31)**

8 170. Respondent Aubuchon, not Respondent Thomas, represented  
9 the State during the grand jury proceedings relating to  
10 investigations of Judge Donahoe, Thomas Irvine, Andrew Kunasek,  
11 David Smith and Sandi Wilson. Exhibit 185.

12 171. None of the persons being investigated by the grand jury  
13 was an MCAO client.

14 172. Respondent Thomas did not have any personal interest that  
15 created a substantial risk that the representation of the State by  
16 Respondent Aubuchon was materially limited.

17 173. IBC has failed to prove by clear and convincing evidence  
18 that Respondent Thomas had any personal interest that created a  
19 substantial risk that the representation of the State by Respondent  
20 Aubuchon was materially limited.

21 174. Respondent Thomas did not possess any of the culpable  
22 mental states set forth in the ABA Standards as to conduct alleged  
23 in count 31.

24 175. IBC has failed to prove by clear and convincing evidence  
25 that Respondent Thomas possessed any of the culpable mental states  
26 set forth in the ABA Standards as to conduct alleged in count 31.

1           **Failure to cooperate (count 33)**

2           176. The filing of exhibits 221 through 238 during the course  
3 of IBC's screening investigation did not constitute a refusal to  
4 cooperate with officials and staff of the State Bar.

5           177. The filing of exhibits 221 through 238 during the course  
6 of IBC's screening investigation did not constitute a failure to  
7 furnish information to officials and staff of the State Bar.

8           178. Respondent Thomas did not possess any of the culpable  
9 mental states set forth in the ABA Standards as to conduct alleged  
10 in count 33.

11           179. IBC has failed to prove by clear and convincing evidence  
12 that Respondent Thomas possessed any of the culpable mental states  
13 set forth in the ABA Standards as to conduct alleged in count 33.

14                           **CONCLUSIONS OF LAW**

15           1. Respondent did not violate ER 1.7(a)(1) by sending  
16 exhibits 6 through 10 to the MCBOS in 2006.

17           2. Respondent did not violate ER 1.6 when he disclosed in  
18 the 2006 news release (exhibit 13) that he had previously advised  
19 the Board about the dispute over hiring counsel because the  
20 disclosure was authorized by ER 1.13.

21           3. Respondent did not violate ER 3.6 when he issued the 2006  
22 news release.

23           4. A County Attorney does not represent personally the  
24 constituents of any County department or the BOS merely by virtue  
25 of the County Attorney's role as legal advisor to the BOS.

26           5. Supervisor Stapley was not personally an MCAO client.

1           6.     Respondent did not violate ER 1.7(a)(1) by virtue of the  
2 MCAO's prosecution of Supervisor Stapley in Stapley I.

3           7.     A prosecutor who pursues a criminal case supported by  
4 probable cause has a substantial purpose for purposes of ER 4.4(a).

5           8.     Respondent Thomas did not violate ER 4.4(a) by  
6 authorizing MCAO's prosecution of Supervisor Stapley in Stapley I.

7           9.     The statute of limitations on the misdemeanors counts  
8 against Supervisor Stapley did not begin to run in 2007, but rather  
9 began to run in 2008.

10          10.    Respondent Thomas did not violate ER 8.4(d) by charging  
11 Supervisor Stapley as to the 44 misdemeanor charges in Stapley I.

12          11.    Because the MCBOS failed to properly adopt financial  
13 disclosure requirements for the Board, there was no failure-to-  
14 disclose crime committed in the single financial disclosure form  
15 obtained by Mr. Goldman in 2007. Because there was as a matter of  
16 law no crime, no statute of limitations could begin to run in 2007.  
17 Respondent Thomas therefore did not as a matter of law violate  
18 8.4(d).

19          12.    Respondent Thomas did not violate ER 3.6(a) by issuing  
20 the August 2009 public statement about Judge Field's dismissal of  
21 multiple counts in Stapley I

22          13.    Respondent Thomas did not violate ER 4.4(a) by sending  
23 exhibits 40 and 66.

24          14.    Respondent Thomas did not violate ER 4.4(a) by  
25 authorizing grand jury subpoenas and public records requests issued  
26 to the County for production of records relating to Court Tower.



1        15. Respondent Thomas did not violate ER 1.7(a)(1) by  
2 authorizing grand jury subpoenas and public records requests issued  
3 to the County for production of records relating to Court Tower.

4        16. Respondent Thomas did not violate ER 1.7(a)(s) by  
5 authorizing grand jury subpoenas and public records requests issued  
6 to the County for production of records relating to Court Tower.

7        17. Respondent Thomas did not violate ER 4.4(a) by bringing  
8 the RICO suit.

9        18. Respondent Thomas did not violate any of the ERs alleged  
10 in Counts 15, 16, 17, 18, 19 or 20.

11       19. The RICO defendants were not immune from potential  
12 federal RICO liability by virtue of Supreme Court Rule 48(1).

13       20. The judge defendants in the RICO case did not enjoy  
14 judicial immunity from federal RICO liability.

15       21. Respondent Thomas did not violate ER 4.4(a) in either the  
16 prosecution of Stapley II or the prosecution of Supervisor Wilcox.

17       22. Respondent Thomas did not violate ER 1.7(a)(1) in the  
18 prosecution of Supervisor Wilcox.

19       23. Respondent Thomas did not violate ER 1.7(a)(2) in the  
20 prosecution of Supervisor Wilcox.

21       24. Respondent Thomas did not violate ER 1.7(a)(2) in the  
22 prosecution of Supervisor Stapley in Stapley II.

23       25. Respondent Thomas did not violate ER 3.8(a) by  
24 authorizing criminal charges against Judge Donahoe he knew to be  
25 unsupported by probable cause.

26       26. Respondent Thomas did not violate ER 4.4(a) by

1 authorizing criminal charges against Judge Donahoe.

2 27. Respondent Thomas did not violate ER 8.4(c) by  
3 authorizing criminal charges against Judge Donahoe.

4 28. Respondent Thomas did not violate ER 8.4(b) by  
5 authorizing criminal charges against Judge Donahoe.

6 29. Respondent Thomas did not violate ER 1.7(a)(2) by  
7 authorizing criminal charges against Judge Donahoe.

8 30. Respondent Thomas did not violate ER 1.7(a)(1) in  
9 connection with the so-called Bug sweep grand jury investigation.

10 31. Respondent Thomas did not violate ER 1.7(a)(2) in  
11 connection with the so-called Bug sweep grand jury investigation.

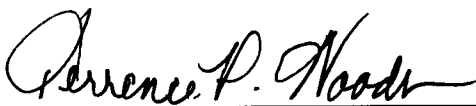
12 32. Respondent Thomas did not violate ER 1.7(a)(2) in  
13 connection with the presentation by Respondent Aubuchon of the  
14 criminal charges against Judge Donahoe to a grand jury.

15 33. Respondent Thomas did not violate former Supreme Court  
16 Rule 53(d) during the screening investigation.

17 34. Respondent Thomas did not violate former Supreme Court  
18 Rule 53(f) during the screening investigation.

19 DATED this 19<sup>th</sup> day of January, 2012.

20 BROENING, OBERG, WOODS & WILSON, P.C.

21  
22 By   
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BY Shan Swartz